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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

SUPPLEMENT TO JOINT PETITION TO REOPEN

Come now City of South Bend, Indiana ("City"), Brothers of Holy Cross, Inc. ("Brothers"), Holy Cross Village at Notre Dame ("Village") and Sisters of the Holy Cross, Inc. ("Sisters") (collectively referred to as "Petitioners") and file this Supplement to Joint Petition to Reopen in the above-captioned proceeding. Pursuant to an inquiry from the Board's Office of Environmental Assessment (OEA), the undersigned counsel for Petitioners has reviewed the *Combined Environmental and Historic Report of the City of South Bend, Brothers of Holy Cross, Inc. and Sisters of the Holy Cross, Inc.* that was prepared by Applicants' counsel and forwarded to various Environmental Contacts pursuant to the Board's governing regulations on October 4, 2006.

Based on that review, it is hereby confirmed that the information set forth in the 2006 CEHR regarding the lack of any adverse environmental impact has not materially changed in any respect and is accurate in all respects. As of this date, the lines have been dormant for over 17 years as no railroad operations have been conducted over the lines since 1994. As a result, there is no reason to question or modify the environmental determinations set

forth in the 2006 CEHR and confirmed by various commenters. Nevertheless, on January 10, 2012, in order to ensure full compliance with the Board's Procedures for Implementation of Environmental Laws, 49 C.F.R. Part 1105, a letter was forwarded to all entities on the original Environmental Contact List (updated to reflect current addressees) that recited the history of the proceeding and requested additional comments, if any, that would be due on January 30, 2012. See Attachment A.

The following matters in the Board's Environmental Assessment (EA), served December 22, 2006, were also mentioned and updated. First, The Chicago, Lake Shore & South Bend Railway Company (CLS&SB), which opposed the initial application, is no longer interested in attempting to acquire the line from Norfolk Southern Railroad (NSR) and has not opposed the Petition to Reopen. Second, Notre Dame has filed a Verified Statement in support of the Petition in which it has disclaimed any interest in future direct rail shipments of coal and any other commodities to its campus. Third, all potential shippers located along the line have provided statements disclaiming any need for future rail service and supporting the abandonment.

Fourth, in response to the statement in the EA that the "City would like to acquire or condemn the portion of the right-of-way within its jurisdiction for public use in the form of a sewer system and a bike and pedestrian trail," it was noted that because the 2006 Application was denied, the City of South Bend was compelled to build the required sewer system along a different route. However, the City continues to want to acquire the right-of-way from NSR that

is located within the City's jurisdiction for a bike and pedestrian trail. As was the case initially, "[t]here is no intent to remove the steel girder bridge over the St. Joseph River, which has been designated as a local historic landmark. If the abandonment is approved, the bridge will be converted to a footbridge for pedestrians, preserving the bridge's essential character." EA at 3.

Brothers have advised NSR that the Order wishes to acquire the segment of the UV right-of-way between MP UV 2.8 and the southwest boundary of its campus that is owned in fee by NSR. The precise MP, which is currently unknown, will have to be determined.

Based on the literal wording of the easements that authorized the construction of the line of railroad, herein identified as ZO 9.6 through ZO 10.5, and the spur line that extends to the Notre Dame campus from MP ZO 9.6, the entire right-of-way located on the Sisters' campus is subject to easements that will cause title to revert to Sisters upon abandonment. The same is true of the segment of the ZO line that is located on the Brothers' campus. Resolution of any potential legal issues related to the deeds and easements is admittedly beyond the scope of this proceeding and will be resolved with NSR following authorization to abandon.

Because there are no circumstances whereby they can envision agreeing to future construction of a new line of railroad through their respective campuses, Holy Cross Village at Notre Dame, Brothers and Sisters contend that there is no legitimate basis for the issuance of a certificate of interim trail use in this or any other adverse abandonment proceeding. Furthermore,

because no entity complied with the Board's regulations governing interim trail use or the requirement imposed in SEA's EA that any request for a trail use condition had to be filed by January 5, 2007, there is no need for the Board to reach the issue of whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application.

The December 22 EA included a recommendation that a condition be imposed that would require Applicants to complete the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f and to report back "regarding any consultations with the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO) and any other Section 106 consulting parties." It is respectfully submitted that there is no need for said condition. By letter dated October 26, 2006, the South Bend and St. Joseph County Historic Preservation Commission informed Applicant's counsel that its Director, Catherine D. Hostetler, had "reviewed and inspected the right-of-way corridor outlined in the report and [found] that other than the landmarked bridge that there are no historic sites or structures within the area of potential effects. The removal of the tracks from the landmarked (Ordinance No. 9234-01) steel girder railroad bridge crossing the St. Joseph River near Angela Boulevard will not have an adverse effect on that structure." Nothing has changed in the interim that would alter Director Hostetler's conclusion.

The photographs of the right-of-way vividly confirm Director Hostetler's observations and demonstrate that there are no historically significant

structures located adjacent to the right-of-way. Of course, even if a structure were so located, salvage activities that are confined to the railroad right-of-way would not have any impact on said structure.

Most importantly, after Applicants submitted their response to the Indiana SHPO's October 6, 2006 request for additional information, nothing further was requested by the SHPO. Being that over 16 months passed between the date of the SHPO's request for additional information and the Board's denial of the original application, it must be assumed that the SHPO was satisfied with the response and that nothing further was required from Applicants. Indeed, given Director Hostetler's October 26 letter confirming the absence of any historic sites or structures, there is nothing else that Applicants can provide in the way of relevant information. Hence, any condition requiring further consultations would be unnecessarily burdensome. In any event, in order to confirm that Applicants have satisfied the Indiana SHPO's requirements, the undersigned counsel states that, on January 9, 2012, he spoke with Miriam Burkett (formerly Miriam Widenhofer) at the Indiana SHPO and thereafter e-mailed the previously exchanged correspondence to her for further review along with the letter that is attached hereto as Attachment A. The identical file was forwarded to Director Hostetler.

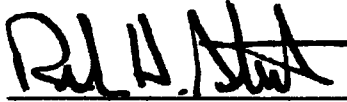
In summary, Applicants/Petitioners submit that abandonment of the lines will not cause any significant environmental impacts. OEA is urged to confirm its earlier determination to that effect.

If additional information is requested, it will be provided. Once again,
expedited consideration of this matter is respectfully requested.

Respectfully submitted,



Aladean M. DeRose
Interim City Attorney
City of South Bend
County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Tele: 574-235-5859
Fax: 574-235-9892



Richard H. Streeter
Counsel for
Sisters of the Holy Cross, Inc.
Brothers of Holy Cross, Inc.
Holy Cross Village at Notre Dame
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
Tele: 202-363-2011
Fax: 202-363-4899

Dated: January 11, 2012

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Supplement to Joint Petition to Reopen was served this 11th day of January 2012, by e-mail, on the following named parties of record:

Greg E. Summy
General Solicitor
Norfolk Southern Railway Company
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
Greg-Summy@Nscorp.Com

Judith A. Robert
1739 Riverside Drive
South Bend, IN 46616
Judith1739@Comcast.Net

James Conley
The Point at North Shore Woods Association
1704 W. North Shore Drive
South Bend, IN 46617
jconley933@aol.com

James K. McConnell
1737 Belmont Avenue
South Bend, IN 46615
Kmcd@Saintmarys.Edu

A handwritten signature in black ink, appearing to read 'R.H. Streeter', written over a horizontal line.

Richard H. Streeter

RICHARD H. STREETER
ATTORNEY AT LAW
5255 Partridge Lane, N.W.
Washington, D.C. 20016
tele: 202-363-2011 fax: 202-363-4899
rhstreeter@gmail.com

ATTACHMENT A

January 9, 2012

ALL PARTIES ON THE ATTACHED ENVIRONMENTAL CONTACT LIST

RE: Docket No. AB-290 (Sub-No. 286), Norfolk Southern Railway
Company—Adverse Abandonment—St. Joseph County, IN

Dear Sir/Madam:

On November 17, 2006, the City of South Bend, Indiana, along with the Brothers of Holy Cross, Inc., and Sisters of the Holy Cross, Inc. (collectively "Applicants"), jointly filed an application with the Surface Transportation Board (STB) to abandon approximately 3.2 route miles of railroad between MP UV 0.0 and MP UV 2.8 and between MP ZO 9.6 and MP ZO 10.5, including an industrial spur line that extends several hundred feet from MP ZO 9.6 in an easterly direction to the University of Notre Dame du Lac.

By letter dated September 28, 2006, in accordance with the STB's environmental regulations, 49 C.F.R. § 1105, a letter was addressed to you requesting your assistance in identifying any potential effects the abandonment might have on the following:

1. Regional or local land use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
3. Energy consumption and efficiency.
4. Air emissions and noise levels
5. Bodies of water and overall water quality under applicable federal, state or local standards
6. Designated wetlands and 100-year flood plains;
7. Endangered or threatened species and critical habitats;
8. Wildlife sanctuaries or refuges and national or state parks or forests;
9. Existing or potential safety hazards; or
10. Coastal Zone Management Areas.

Advice was also requested whether permits under Section 402 or 404 of the Clean Water Act (33 U.S.C. §§ 1342, 1344) would be required.

On December 22, 2006, the STB's Section of Environmental Analysis (SEA) issued its Environmental Assessment (EA). Subject to one recommended condition that would have required further consultation with the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO) and any other Section 106 consulting parties, SEA concluded that "abandonment will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary."

On February 14, 2008, the STB denied the application without prejudice to seeking reopening. On September 13, 2011, the Applicants, joined by Holy Cross Village at Notre Dame, filed a Joint Petition to Reopen. That Petition is currently pending before the STB.

On January 6, 2012, the Board's Office of Environmental Analysis (OEA) requested Applicants to review and update the Combined Environmental and Historic Report (CEHR) that

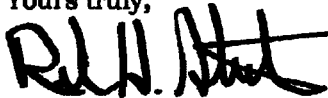
was previously forwarded to you on October 4, 2006. Based on my personal review, I hereby confirm that the information set forth in the CEHR regarding the lack of any adverse environmental impact has not materially changed in any respect and is accurate in all respects. As of this date, the lines have been dormant for over 17 years as no railroad operations have been conducted over the lines since 1994. As a result, the environmental determinations set forth in the 2006 CEHR have not been modified. If you require an additional copy of the CEHR, please send me an e-mail at rhstreeter@gmail.com and I will provide another copy.

There are several matters in the EA that should be updated. First, The Chicago, Lake Shore & South Bend Railway Company (CLS&SB), which opposed the initial application, is no longer interested in attempting to acquire the line from Norfolk Southern Railroad (NSR) and has not opposed the Petition to Reopen. Second, Notre Dame has filed a Verified Statement in support of the Petition in which it has disclaimed any interest in future direct rail shipments of coal and any other commodities to its campus. Third, all potential shippers located along the line have provided statements supporting the abandonment. Fourth, the City of South Bend was compelled to build the needed sewer system over a different route. The City continues to want to acquire the right-of-way located within the City limits from NSR for use as a bike and pedestrian trail. As noted in the EA, "[t]here is no intent to remove the steel girder bridge over the St. Joseph River, which has been designated as a local historic landmark." The bridge will be converted to a footbridge for pedestrians, preserving the bridge's essential character. A copy of the Petition for Reopening and supporting evidence is available for your review on the STB's website at www.stb.dot.gov.

Expedited consideration of this matter is requested. Should you determine that any update of your prior submission regarding this application is necessary, please forward your written comments to Richard H. Streeter at 5255 Partridge Lane, N.W., Washington, D.C. 20016 or at rhstreeter@gmail.com. A copy should also be forwarded to Kenneth Blodgett, Office of Environmental Analysis, Surface Transportation Board, 395 E Street, S.W., Washington, D.C. 20423, or to BlodgettK@stb.dot.gov. **Comments should reference Docket No. AB-290 (Sub-No. 286) in all correspondence, including e-filings, addressed to the Board. Comments should be filed no later than January 30, 2012.**

If you have any questions or need additional information, please feel free to contact Richard H. Streeter at 202-363-2011. Thank you for your consideration in this matter.

Yours truly,



Richard H. Streeter
Counsel for Applicants

RHS:rs

ENVIRONMENTAL CONTACT LIST (REVISED 1/9/2012)
AB 290 (SUB-No. 286)

State Clearinghouse

Indiana Department of Transportation
Railroad Section
100 N. Senate Avenue
1GC-N, Room N901
Indianapolis, IN 46204

State Environmental Protection Agency

Indiana Department of Environmental
Management
Indiana Government Center
100 N. Senate Avenue
Indianapolis, IN 46205

State Coastal Management Agency

Indiana Department of Natural
Resources, Division of Water
402 West Washington, Street,
Room W2615
Indianapolis, IN 46204

Head of Each County

Andrew Kostielney
St. Joseph County Commissioner
Division 1
227 West Jefferson Blvd., 7th Floor
South Bend, IN 46601

Dave Thomas
St. Joseph County Commissioner
Division 2
227 West Jefferson Blvd., 7th Floor
South Bend, IN 46601

Bob Kovach
St. Joseph County Commissioner
Division 3
227 West Jefferson Blvd., 7th Floor
South Bend, IN 46601

Environmental Protection Agency
Regional Office for Indiana

US EPA Region 5
Office of Strategic Environmental Analysis
77 W. Jackson Blvd.
Chicago, IL 60604

U.S. Fish and Wildlife Service

H. Dale Hall, Director
U.S. Fish and Wildlife Service
1849 C Street, NW
#3256
Washington, D.C. 20240

U.S. Fish and Wildlife Service
Region 3 Office
One Federal Drive
BHW Federal Building
Fort Snelling, MN 55111-4056

U.S. Army Corps of Engineers

U.S. Corps of Engineers
Headquarters
441 G Street, NW
Washington, D.C. 20314

U.S. Army Engineer District, Detroit
McNamara Federal Building
477 Michigan Avenue
Detroit, MI 48226-2575

National Park Service – Department of Interior

Jonathan B. Jarvis, Director
National Park Service
1849 C Street, NW
Washington, D.C. 20240

National Resource Conservation Service

Dave White, Chief
1400 Independence Ave., SW
Room 5105-A
Washington, D.C. 20520

Natural Resources Conservation Service
USDA
6013 Lakeside Boulevard
Indianapolis, IN 46278

State Historic Preservation Office

Indiana Department of Natural Resources
Division of Historic Preservation and Archeology
402 West Washington Street
Indiana Government Center South, Room W256
Indianapolis, IN 46204
mburkett@dnr.in.gov

Catherine D. Hostetler, Director
South Bend and St. Joseph County
Historic Preservation Commission
227 West Jefferson Blvd.
South Bend, IN 46601-1830
SBSJCHP@co.st-joseph.in.us

National Geodetic Survey

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East West Highway
Silver Spring, MD 20910-3282

Professor Boudewijn H.W. van Gelder
State Geodetic Coordinator
Geomatics Engineering
School of Civil Engineering,
Purdue University
550 Stadium Mall Drive
West Lafayette, IN 47907-2051
vngelder@purdue.edu